

**ZONING BOARD OF APPEALS**  
**MEETING MINUTES**  
**November 18, 2008**  
**4:00 P.M.**

**CALL TO ORDER:** Mr. Carlyle Sims, Chairperson called meeting to order at 4:00 p.m.

**ATTENDANCE:**

**Members Present:** Deland Davis, Gentry Hammons, James Moreno, Carlyle Sims and John Stetler

**Members Excused:** Greg Dunn, and Mike Fatt

**Staff Present:** Glenn Perian, Senior Planner; and Leona Parrish, Admin. Assistant; Planning Dept.

**ADDITIONS OR DELETIONS TO THE AGENDA:** None

#Z-13-08: With the absence of a building permit and survey report; Mr. Dunn is not in favor of approval for this variance request.

**OLD BUSINESS:**

**Appeal # Z-11-08:** (Tabled from the 10/14/08 Mtg.)

Mr. Glenn Perian stated this was an appeal from Mr. Albert & Mrs. Irene Jackson, 361 N. Wood Street, Battle Creek, MI 49017 requesting a variance to allow a rebuild of a legal-nonconforming two-unit residence in an I-1 "Light Industrial District" for property located at 402 & 404 Jackson Street. Stated the Zoning Board tabled this appeal at the October 14<sup>th</sup> meeting, requesting the applicant provide cost repair estimates.

Mr. Glenn Perian stated Greg Dunn was not able to attend the meeting and asked that it be noted for the record his opinion regarding this appeal. #Z-11-08: If the board is in favor of granting an additional 30 days; He would agree, but feels 60 days would be sufficient time to gather repair estimates. (Assuming the Jacksons does not have estimates today)

Mr. Perian noted he spoke to Mr. Jackson yesterday and he was hoping to have some estimates today. Said Mr. & Mrs. Jackson are present here today.

Mr. Carlyle Sims said in order to proceed the board would need a motion to remove from being tabled.

***MOTION: MR. JAMES MORENO MADE A MOTION TO REMOVE # Z-11-08 FROM BEING TABLED AT THE OCTOBER 14, 2008 MEETING, SUPPORTED BY MR. DELAND DAVIS.***

**Discussion:** None

***MR. CARLYLE SIMS ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN TO REMOVE VARIANCE #Z-11-08 FROM BEING TABLED; ALL IN FAVOR; NONE OPPOSED: MOTION APPROVED.***

Mr. & Mrs. Albert Jackson, 361 N. Wood Street stated they have the estimates except the electrical, the electrician was to come and provide a bid yesterday, but was sick and did not come. Said he had two plumbing estimates; one from Clyde-Hanger and the other from Crooks Plumbing and Heating.

Mr. James Moreno asked what the amount was for the two plumbing estimates. Mrs. Jackson said the estimate from Clyde Hanger Plumbing & Heating was \$10,895 and for Arthur Crooks it was \$7,520 dollars.

Mr. Sims asked about the plastering, roofing, siding etc.

Mr. Jackson said they did not have those today; said all they needed was for the plastering and electrical work.

Mr. John Stetler asked if the windows were damaged also. Mr. Jackson said they wanted to redo everything including the windows, siding and roofing and that he did not have any estimates for the windows.

Mr. James Moreno stated they needed their general contractors estimate to do the siding, windows, plaster work, interior, and electric. Which would be two more estimates needed.

Mr. Jackson said that when he calls them, it takes a week or so for them to get back to him.

Mr. John Stetler asked Mr. Jackson if they wanted the board to act on the proposal with the limited information and probably be a negative outcome or did they want this petition to be tabled again to provide more time for the estimates.

Mr. Jackson said he would like more time to get the estimates.

Mr. Gentry Hammons asked if the SEV and the amount to repair exceeded the SEV value.

Mr. & Mrs. Jackson said they did not know what the SEV value was.

Mr. James Moreno stated according to the file document the SEV is \$23,001 dollars. Based on the estimate they have from the plumber, it is already approximately 1/3 of the SEV and still needing the general contractor and electrician estimates.

Mrs. Jackson stated the plumber and electrician told them that if they clean out the debris, and have the walls bare it would be cheaper for when they come in to do the work. She was not sure if her husband had a general contractor yet, but she expects it to be close and does not think it will go over. Said they will be working with them to try and keep down the cost.

Mr. Jackson said that the plumbing estimates' are for all the fixtures, shower, bathtub, etc. Said if he was to go through with them and take out some of the items, it would cost less.

Mr. Carlyle Sims stated this petition was tabled in order to allow them additional time to gather estimates and that this is not something that the Zoning Board normally does; they are here to work out a re-zoning matter. They need to know if the estimates are greater than the value of the property and now are here today without any information. He feels this is a problem and was trying to work with them by allowing an additional 30 days and nothing has been done. They now need to decide to vote for an additional extension or not.

Mr. Johnson stated they have tried to call the contractors, who then call back two or three days later; said it is not like they have not tried to contact them. Said the electrical contractor was sick and did not come.

Mr. Carlyle Sims stated that is just one part; they do not have a general contractor with the estimates for windows, doors, interior etc. and it puts the Zoning Board in a spot.

***Mr. Carlyle Sims asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.***

***MOTION: MR. JOHN STETLER MADE A MOTION TO TABLE # Z-11-08 VARIANCE UNTIL THEY HAVE FULL COMPLETE BIDS (REBUILD ESTIMATES) TO ALLOW A LEGAL NON-CONFORMING TWO-UNIT DUPLEX TO BE REBUILT IN A "I-1 LIGHT INDUSTRIAL DISTRICT FOR PROPERTY LOCATED AT 402 & 404 W. JACKSON STREET, SUPPORTED BY MR. JAMES MORENO.***

**Discussion:**

Mr. James Moreno stated that having all the information would be best; if it does exceed the SEV of \$23,001 dollars then the decision will be pretty much made. It would allow them the opportunity and would be fair to them and comply with the zoning ordinance.

Mrs. Johnson stated this was the first time they have ever gone through something like this, and is difficult with her husband working and trying to catch different contractors, said they are trying but it is difficult.

Mr. John Stetler asked if they only need the variance if the repairs exceed the taxable value.

Mr. Perian stated that was correct, a variance is needed if it exceeds 50% of the insured value (referred to page 5 of the staff report).

Mr. John Stetler said they need to know if it will exceed that amount and if it was under that amount then permits can be issued without a variance. He asked what the insurable value was; said he would have difficulty approving if it exceeds more than 50%, because it is in an industrial area he would not want to develop it residentially.

Mr. Johnson said the insurable value is more than the SEV.

Mr. Jim Moreno stated he also would be against this variance if it were to exceed the 50% value because it is already a legal non-conforming property. If it comes under the 50% then the Zoning Board would not need to review and make a decision.

Mr. Carlyle Sims stated that the City of Battle Creek had assessed the damage made by the fire (he read Mr. Kim Tuck's report with the estimate cost of repair being \$35,000 and the SEV is \$23,000 dollars).

Mr. John Stetler stated they are not working with SEV; it is the insurable value which is duplication cost and would be a large difference between that and the SEV. For instance if it was 1,500 sq. ft. and it is \$100 per sq. ft. to repair, it could be \$150,000 dollars and it would be 50% of that amount not the SEV.

Mr. Deland Davis stated if that is the case they could very well come in under 50% of the insurable value.

Mr. Perian stated that is what the board is trying to discover by requesting the repair estimates.

Mr. John Stetler said that if Mr. Tuck could go back and look at what the insurable value might be, it would be helpful.

Mr. Perian stated they could ask him to do that and provide next month to the Zoning Board.

Mr. John Stetler stated we should not bring it before the Zoning Board until they have gathered the repair estimates and know what the amount is for the insurable value.

Mr. Stetler asked Mr. & Mrs. Johnson if they understood. They said yes, they understood that the insurable value would be more than the SEV and that 50% of that would be more than the \$23,000 dollars.

Mr. Stetler said it might allow them to have a higher repair cost and not have to demolish the building with out needing a variance. Mr. Perian stated inspections would then issue the permits for the repairs.

Mr. James Moreno asked if they are looking at the insured value; then we are asking city staff to calculate a cost. Said wouldn't Mr. & Mrs. Jackson know their insured value or insurance policy and presume the insurance policy would be paying for these repairs.

Mr. Perian stated they need to look at what the value was of the original structure and could be reconstructed with a higher quality of material and would raise the price of the value. They are talking about the original structures insurable value, not what they are going to build in the future.

Mr. Stetler stated that would be correct; to put it back to what it was before the fire.

Mr. Carlyle Sims asked if the house can be insured in an Industrial Zone. He does not think it can.

Mr. Perian stated that if they approve the variance request than it meets all the requirements in the findings. If the board is going to deny the request then they would need to specifically state which of the criteria it does not meet; if they choose to table then we will just table this petition.

Mr. John Stetler asked if they don't table and vote against the motion to issue a variance; they could still come back to the city with their estimates to rebuild. Mr. Stetler suggested they turn down and then the board would not need to make a decision if it is under the 50 % of insured value. He suggested that Kim Tuck needed to look at the material that was there before the fire.

Mr. Carlyle Sims asked what the date of the fire was; and had the City condemned the property? Mr. Perian stated the variance request stops the process of Dangerous Buildings and Housing Board of Appeals and that as long as it is boarded-up and secure and in the process of obtaining a variance they are exempt from that process.

Mr. Johnson stated the fire was May 2008; said they were in the process of doing repairs when someone started the fire. Stated Mr. Kim Tuck was there the day of the fire.

Mr. Deland Davis stated he was bothered with the insurable value and that the house did not burn completely down and the insurable value to him would be rebuilding the entire house. In this case it is badly destroyed but the structure is still standing. Seems the question would be; what would the insurance company have to pay to put it back to what it was 30 minutes before the fire.

***MR. CARLYLE SIMS ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN TO TABLE THE VARIANCE UNTIL ALL REPAIR ESTIMATES ARE MADE AVAILABLE IN ORDER TO MAKE A DECISION; ALL OPPOSED; NONE IN FAVOR: MOTION FAILED.***

***MOTION: MR. JOHN STETLER MADE A MOTION THEY ISSUE A VARIANCE ACCORDING THE INFORMATION PROVIDED FOR APPEAL # Z-11-08, FOR PROPERTY LOCATED AT 402 & 404 W. JACKSON STREET, SUPPORTED BY MR. JAMES MORENO.***

**Discussion: None**

***MR. CARLYLE SIMS ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; NONE IN FAVOR; ALL OPPOSED: MOTION FAILED. (See Attached Sheet of Zoning Board of Appeals Findings)***

Mr. Glenn Perian stated he will contact Mr. Kim Tuck, Building Superintendent, Inspections Department and have him provide a duplication cost to determine the insurable value for the structure. The property owner should take the repair estimates to Mr. Tuck. If the estimates are lower than the duplication cost or insurable value, they will then be allowed to rebuild. If the repair cost estimates are higher than 50% of the insurable value, then they will not be allowed to rebuild. Property owners stated they understood. Mr. Perian said to give him a call if they have questions.

**Appeal # Z-13-08: (Tabled from the 10/14/08 Mtg.)**

Mr. Glenn Perian stated this was an appeal from Ms. April Watts, 38 Riverview Avenue, Battle Creek, MI, asking for a variance to allow a detached garage that was destroyed by fire and rebuilt to remain 1 ½ ft. from side-yard property line in a "R-1C Single Family Residential District" for property located at 38 Riverview Avenue. Noted this request is a variance from "Chapter 1286 Accessory Buildings" and uses in residential districts, which states that detached accessory buildings shall not be closer than 3 feet from all sides and rear lot lines. It should be noted that this particular garage was constructed without permits.

Mr. Perian wanted to add that he had made numerous calls to the appellant since last months meeting to get a response to receiving the property survey report; all were unanswered or person stated they would have Ms. Watts return my call, which never occurred.

Mr. Perian stated he spoke with Mr. Frank Ballard, Building Inspector; who stated he spoke with Ms. April Watts, and her son who agreed to pull the permits and move the new garage within the required setbacks.

Mr. Perian suggests that this petition be pulled off the Table and then deny the request based on the findings of facts provided.

Mr. Carlyle Sims said in order to proceed the board would need a motion to remove from being tabled.

**MOTION: MR. JAMES MORENO MADE A MOTION TO REMOVE # Z-13-08 FROM BEING TABLED AT THE OCTOBER 14, 2008 MEETING, SUPPORTED BY MR. GENTRY HAMMONS.**

**Discussion: None**

**MR. CARLYLE SIMS ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN TO REMOVE VARIANCE #Z-13-08 FROM BEING TABLED; ALL IN FAVOR; NONE OPPOSED: MOTION APPROVED.**

**MOTION: MR. DELAND DAVIS MADE A MOTION THEY ISSUE A VARIANCE FOR APPEAL # Z-13-08, FOR PROPERTY LOCATED AT 38 RIVERVIEW AVENUE, SUPPORTED BY MR. JAMES MORENO.**

**Discussion: None**

**MR. CARLYLE SIMS ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; NONE IN FAVOR; ALL OPPOSED: MOTION FAILED. (See Attached Sheet of Zoning Board of Appeals Findings)**

Mr. John Stetler asked if it was difficult to move a garage. Mr. Perian stated he was surprised the owners feel it would be that simple. He stated Mr. Ballard had said this was their intent, so he assumes it can be done and would be cost effective as opposed to tearing it down.

John Stetler said you could support it and it does not have the plaster etc to deal with and could be done.

## **NEW BUSINESS:**

**Approval of the Zoning Board of Appeals Annual Meeting Dates for the Year 2009.**

**MOTION: MR. GENTRY HAMMONDS MADE A MOTION TO APPROVE THE ZONING BOARD OF APPEALS ANNUAL MEETING DATES FOR THE YEAR 2009 AS PRESENTED, SUPPORTED BY MR. JAMES MORENO.**

**Discussion: None**

**MR. CARLYLE SIMS ASKED FOR ANY COMMENTS, BEING NONE A VOTE WAS TAKEN TO APPROVE THE MEETING DATES FOR 2009 AS PRESENTED; ALL IN FAVOR; NONE OPPOSED: MOTION APPROVED.**

## **APPROVAL OF MINUTES:**

***MOTION WAS MADE BY MR. DELAND DAVIS TO APPROVE THE OCTOBER 14, 2008 ZONING BOARD OF APPEALS MINUTES AS SUBMITTED, SUPPORTED BY MR. JOHN STETLER. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.***

**COMMENTS BY THE PUBLIC:** None

**COMMENTS BY THE MEMBERS / STAFF:**

Mr. Carlyle Sims stated the board asked for the repair estimates to be available at this meeting and that there are people available to provide them; that the board cannot always postpone and it could continue on forever. Said he does not like to keep putting the petitions off; if this property was before the Housing Board of Appeals it would have been condemned and Code Compliance would write them up for work not being done.

Mr. Gentry Hammons asked how we would know if they said the cost was lower and then later went up above the 50% of SEV. Mr. Perian stated he is not sure how it could be tracked; you would have to trust the property owner and also the Inspections department would have record of the cost of repairs when the permit are pulled for the repair work.

**ADJOURNMENT:** Meeting adjourned at 4:52 p.m.

Submitted by: Leona A. Parrish  
Administrative Assistant, Planning Department